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Emily B Caudill REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 18:150. Employer's withholding reporting requirements.

5 RELATES TO: KRS 131.155, 141.330

6 STATUTORY AUTHORITY: KRS 131.130, 131.155, 141.330

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.155(3)(c) requires the
8 department to promulgate administrative regulations establishing electronic fund transfer payment
9 requirements for the payment of taxes and fees administered by the department. KRS 141.330(1)
10 authorizes the department to promulgate administrative regulations to require employers to remit
11 the tax withheld under KRS 141.310 and 141.315 within a reasonable time after the payroll period
12 or other period. This administrative regulation prescribes the reporting and payment requirements
13 for employers withholding Kentucky income tax.

14 Section 1. Definitions. "Lookback period" means the twelve (12) month period ending on
15 December 31 of the year immediately preceding the current calendar year. For example, the
16 lookback period for calendar year 2020[~~2018~~] is the period beginning on January 1, 2019[~~2017~~]
17 and ending on December 31, 2019[~~2017~~].

18 Section 2. Reporting and Payment Requirements. Unless otherwise required or allowed by
19 Section 3 of this administrative regulation:

20 (1)(a) Any employer who withheld income tax of less than \$400 during the lookback period
21 shall report and pay the tax annually using Revenue Form K-3, "Employer's Annual Reconciliation

1 Return."

2 (b) Revenue Form K-3 and the income tax withheld shall be filed and paid on or before the last
3 day of the month following the close of the calendar year in which the tax was withheld (January
4 31).

5 (2)(a) Any employer who withheld income tax of \$400 or more, but less than \$2,000 during
6 the lookback period shall report and pay the tax quarterly using Revenue Form K-1, "Employer's
7 Return of Income Tax Withheld."

8 (b) Revenue Form K-1 and the income tax withheld each quarter shall be filed and paid on or
9 before the last day of the month following the close of each of the first three (3) quarters of the
10 calendar year (April 30, July 31, and October 31).

11 (c) Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax
12 withheld for the fourth quarter shall be filed and paid on or before the last day of the month
13 following the close of the calendar year in which the tax was withheld (January 31).

14 (3)(a) Any employer who withheld income tax of \$2,000 or more, but less than \$50,000 during
15 the lookback period shall report and pay the tax monthly using Revenue Form K-1, "Employer's
16 Return of Income Tax Withheld."

17 (b) Revenue Form K-1 and the income tax withheld each month shall be filed and paid on or
18 before the 15th day of the following month for each of the first eleven (11) months of the calendar
19 year.

20 (c) Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax
21 withheld for the last month shall be filed and paid on or before the last day of the month following
22 the close of the calendar year in which the tax was withheld (January 31).

23 (4)(a)1. Except as provided in paragraph (b) of this subsection, any employer who withheld

1 income tax of \$50,000 or more during the lookback period shall report and pay the tax twice
2 monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld."

3 2. Revenue Form K-1 and the income tax withheld during the first through the 15th day of each
4 month of the calendar year shall be reported and paid on or before the 25th day of that month.

5 3. Revenue Form K-1 and the income tax withheld during the 16th through the last day of each
6 month of the calendar year shall be reported and paid on or before the tenth day of the following
7 month.

8 4. However, Revenue Form K-1 and the income tax withheld during the first calendar month
9 shall be filed and paid on or before the tenth of the following month (February 10), and the income
10 tax withheld for the period beginning December 16 and ending on December 31 shall be paid with
11 Revenue Form K-3, "Employer's Annual Reconciliation Return," which shall be filed on or before
12 the last day of the month following the close of the calendar year in which the tax was withheld
13 (January 31).

14 (b) Any employer who withheld income tax during the lookback period of \$50,000 or more
15 and whose average monthly income tax withheld during the lookback period is more than \$25,000
16 shall pay the tax withheld by electronic funds transfer.

17 (5) The department shall provide written notification of the reporting and payment
18 requirements to any employer who does not have a lookback period.

19 (6) For periods beginning on or after January 1, 2021, twice monthly and monthly filers shall
20 electronically file and pay the income tax withheld.

21 (7) For periods beginning on or after January 1, 2022, all filers shall electronically file and pay
22 the income tax withheld.

23 Section 3. Electronic Fund Transfers. (1) If, on any day during a reporting period, an employer

1 accumulates \$100,000 or more of total income tax withheld before a current electronic transaction
2 is otherwise due, the employer shall pay the tax withheld by electronic funds transfer. The
3 employer shall electronically transfer the tax withheld as provided by 103 KAR 1:060 by the close
4 of the first banking day after the first day the employer accumulates \$100,000 or more of income
5 tax withheld.

6 (2)(a) Any employer not required to pay the tax by electronic funds transfer may make a written
7 request to the department and, if approved by the department, shall be subject to the same
8 requirements as those employers required to electronically transfer the tax.

9 (b) Any employer who may pay by electronic funds transfer shall continue to pay the tax
10 withheld by electronic funds transfer until the department authorizes the employer in writing to
11 change his reporting and payment method.

12 Section 4. Authority to Change Reporting and Payment Requirements. Pursuant to the
13 provisions of Section 2 of this administrative regulation:

14 (1) The department may change annually the reporting or payment requirements of any
15 employer upon written notice to the employer.

16 (2) Upon written request by any employer and approval by the department, the department may
17 change the reporting or payment frequency prescribed by this administrative regulation.

18 Section 5. Penalties and Interest. Any employer who fails to comply with the provisions of this
19 administrative regulation shall be subject to penalties as provided in KRS 131.180 and interest as
20 provided in KRS 131.183.

103 KAR 18:150

APPROVED:

Daniel Bork

DANIEL BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

Oct 10, 2019

DATE APPROVED BY AGENCY

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation will be held on December 27, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments will be accepted through December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Revenue Tax Policy Research/Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 103 KAR 18:150

Contact Person: Lisa Swiger
Phone Number: (502)564-9526
Email: Lisa.Swiger@ky.gov

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This regulation provides rules for determining employer withholding tax reporting and remittance requirements.
 - (b) The necessity of this administrative regulation: This regulation is necessary to provide employers with requirements for the timely reporting and remitting of withholding tax.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require that the Department of Revenue provide rules to employers regarding the filing and remittance requirements for withholding tax.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will reduce errors by employers and reduce compliance efforts and time for the Department of Revenue.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This amendment adds new language to explain electronic filing and payment requirements by filing frequencies.
 - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clear up confusion that taxpayers currently have regarding what is required to be filed electronically with the department in relation to income tax withheld.
 - (c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).
 - (d) How the amendment will assist in the effective administration of the statutes: See (1)(d).
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All employers required to withhold and remit tax are affected by this regulation.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions, other than reporting electronically on or after January 1, 2021 or January 1, 2022 depending on the filing frequency.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown. However, there are no additional costs from the department.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By following the new guidelines, employers will comply with withholding reporting and remittance requirements and receive fewer letters and potential penalties from the department for late filing.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: There will be no additional expenses incurred outside the current department funding and staff to implement this administrative regulation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budgetary funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since all employers will follow the same requirements will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 18:150

Contact Person: Lisa Swiger
Phone Number: (502)564-9526
Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 131.155 and 141.330.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for the department or any other government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: